Supreme Court, U.S.
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No. 94-1940

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

THE PEOPLE OF THE STATE OF MICHIGAN,
PETITIONER

vs.

FAROD MALLORY AND GARY GOODWIN
RESPONDENTS

ON CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF MICHIGAN

PETITIONER'S REPLY

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QUESTION PRESENTED

UNDER UNITED STATES V LOVASCO, 431 US 783, 97 S Ct 2044, 52 L Ed 2d 752 (1977) AND ARIZONA V YOUNGBLOOD, 488 US 55, 109 SCt 333, 102 L Ed 2d 281 (1988), DOES A DUE PROCESS "DELAY IN ARREST" CLAIM REQUIRE BOTH A SHOWING BY THE ACCUSED OF PREJUDICE, AND A SHOWING THAT THE DELAY WAS INTENTIONAL ON THE PART OF THE STATE FOR THE PURPOSE OF GAINING A TACTICAL ADVANTAGE?

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REPLY TO ANSWER TO PETITION

Respondents' answer to the Petition for Certiorari alleges that the question presented should not be reviewed because the Michigan decisions on "delay in arrest" are based on state law. Not only is this claim plainly specious, but its background further demonstrates the need for plenary review by this Court of the question presented.

First, petitioner would note the requirement that there be a "plain statement" that the state court is relying on the state constitution rather than the federal constitution. See Michigan v Long, 463 US 1032 (1983). No such plain statement exists in this case. The trial court opinion refers only to People v Hernandez, 15 Mich App 141 (1968), and to this Court's decision in United States v

Lovasco, 431 US 783 (1977), as well as to the postLovasco Michigan case of People v Bisard, 114 Mich App 784 (1982).

Hernandez, however, refers only to "due process," and refers to one case, a federal case, Ross v United States, 349 F2d 210 (1965). Bisard refers to Hernandez, which it then reconsiders in light of "two United States Supreme Court cases"; namely, Lovasco, and United States v Marion, 404 Mich 307 (1971). The court in Bisard reviewed the construction of Lovasco by other jurisdictions, noting the inconsistency in approach to the due process question, see 114 Mich App 789-790. The court then adopted the approach of the State of Illinois to Lovasco as its own: "We believe that Illinois' interpretation of Lovasco provides an appropriate method of balancing...." 114 Mich App at 790. Plainly, when Michigan decisions refer to the "Michigan test," they are referring to

the "Michigan interpretation" of Lovasco, not any interpretation of state law, revealing that there are varying interpretations of Lovasco from which to choose, which thus demands this Court's attention. It supplies no support for any claim that the State Constitution supplies the "Michigan rule" (the Michigan Constitution is not even cited in Bisard).

What of the Michigan Court of Appeals decision in this case? That decision does not cite the state constitution, but only Bisard, which is not based on the state constitution, and the case of People v Reddish, 181 Mich App 625 (1989). That case simply refers to "due process," and to Bisard, and notes other cases. No case in Michigan purports to resolve the "delay in arrest" issue based on the Michigan Constitution. Indeed, the case the Michigan Court of Appeals declined to find

controlling in the present case, People v Leigh, 182 Mich App 96 (1989), itself reversed the dismissal of charges based on a claim of prejudice from lost evidence during a delay in arrest, and did so after remand from this Court, see Michigan v Leigh, 104 L Ed 2d 150 (1989), to reconsider in light of Arizona v Youngblood, 488 US 51 (1988).

There is thus not only no substance to the respondents' claim of an independent and adequate state ground here, but further that there can be differing "state rules" as to what the requirements of federal due process are under Lovasco is precisely that which requires the attention of this Court.

CONCLUSION

WHEREFORE, Petitioner respectfully submits that plenary review is warranted, and requests that certiorari be granted.

Respectfully submitted,

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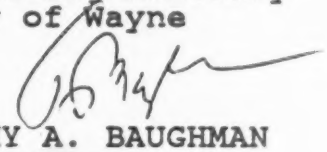

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